

**COPY**

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12 Attorneys for Plaintiff,  
13 Kelly Gabel

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 Kelly Gabel,

17 Plaintiff,

18 vs.

19 Performant Recovery, Inc.; and DOES 1-  
20 10, inclusive,

21 Defendants.



22 **CV13- 5895** *TLG*  
23 Case No.

24 **COMPLAINT FOR DAMAGES**  
25 **1. VIOLATION OF FAIR DEBT**  
26 **COLLECTION PRACTICES ACT,**  
27 **15 U.S.C. § 1692 ET. SEQ.;**  
28 **2. VIOLATION OF FAIR DEBT**  
**COLLECTION PRATICES ACT,**  
**CAL.CIV.CODE § 1788 ET. SEQ.**

**JURY TRIAL DEMANDED**

COMPLAINT FOR DAMAGES

1 For this Complaint, the Plaintiff, Kelly Gabel, by undersigned counsel, states as  
2 follows:  
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt  
6 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), and the invasions of  
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to  
8 collect a consumer debt.  
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.  
11

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that  
13 Defendants transact business here and a substantial portion of the acts giving rise to  
14 this action occurred here.  
15

16 **PARTIES**

17 4. The Plaintiff, Kelly Gabel (hereafter "Plaintiff"), is an adult individual  
18 residing at Brooksville, Florida, and is a "consumer" as the term is defined by 15  
19 U.S.C. § 1692a(3).  
20

21 5. Defendant, Performant Recovery, Inc. ("Performant"), is a California  
22 business entity with an address of 818 West Seventh Street, Los Angeles, California  
23 90017, operating as a collection agency, and is a "debt collector" as the term is  
24 defined by 15 U.S.C. § 1692a(6).  
25  
26  
27  
28

1           6. Does 1-10 (the “Collectors”) are individual collectors employed by  
2 Performant and whose identities are currently unknown to the Plaintiff. One or more  
3 of the Collectors may be joined as parties once their identities are disclosed through  
4 discovery.  
5

6           7. Performant at all times acted by and through one or more of the  
7 Collectors.  
8

9                           **ALLEGATIONS APPLICABLE TO ALL COUNTS**

10          **A. The Debt**

11           8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to  
12 Citibank Student Loans (the “Creditor”).  
13

14           9. The Debt arose from services provided by the Creditor which were  
15 primarily for family, personal or household purposes and which meets the definition  
16 of a “debt” under 15 U.S.C. § 1692a(5).  
17

18           10. The Debt was purchased, assigned or transferred to Performant for  
19 collection, or Performant was employed by the Creditor to collect the Debt.  
20

21           11. The Defendants attempted to collect the Debt and, as such, engaged in  
22 “communications” as defined in 15 U.S.C. § 1692a(2).  
23  
24  
25  
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28

**B. Performant Engages in Harassment and Abusive Tactics**

12. Beginning on or around September 2012, Plaintiff agreed to make monthly payments of \$50.00 to Performant in an effort to reduce the balance owing on the Debt.

13. Plaintiff made the payments as agreed and in an effort to more quickly satisfy the Debt, in February 2013, Plaintiff made a significantly larger payment in the amount of \$3,000.00.

14. Despite making monthly payments, Performant began to place calls to Plaintiff at an excessive and harassing rate on an almost daily basis, often times calling Plaintiff multiple times throughout each day, placing up to six (6) calls per day to Plaintiff's cellular telephone. The calls were annoying and intrusive, especially insofar as Plaintiff had made a substantially higher payment.

15. Plaintiff spoke with Performant to object to the constant calls. Performant claimed that it had not received a payment from Plaintiff. Plaintiff advised Performant that he had made the \$3000 payment and that his bank reflected that Performant had in fact received the payment.

16. Performant demanded that Plaintiff provide them with proof of her \$3,000.00 payment. Plaintiff provided Performant with proof that the payment had been made; however, Performant continued to call Plaintiff at an excessive rate as aforementioned.

1           17. Even after providing Performant with proof of the payment, Performant  
2 continued to insist that the payment had not been paid. Plaintiff requested an  
3 accounting from Performant to evidence all the payments that had been made.  
4

5           18. Performant agreed to provide Plaintiff with an accounting, but never did,  
6 and continued to call Plaintiff at an excessive rate as aforementioned.  
7

8           19. In March, instead of the agreed upon payment of \$50, Plaintiff paid  
9 Performant the sum of \$1000. The calls from Performant nevertheless continued to  
10 come.  
11

12           20. Plaintiff repeatedly requested the accounting of her payments, but was  
13 told she could not receive an accounting until she filled out new financial information.  
14

15           21. Performant sent Plaintiff two letters on April 15, 2013, neither of which  
16 contained the promised accounting from Performant. The first letter confirmed the  
17 agreement for Plaintiff to pay \$50 per month and required nothing other than for  
18 Plaintiff to make the agreed upon payments. The second letter advised Plaintiff that  
19 she was required to send certain financial information if she wished to make voluntary  
20 payments.  
21

22           22. Performant's two letters were conflicting and confusing, especially since  
23 Plaintiff had been making monthly payments for quite some time. Plaintiff advised  
24 Performant that she would make no payments until such time as an accounting was  
25 received.  
26  
27  
28



4           30.    The foregoing acts and omissions of the Defendants constitute numerous  
5 and multiple violations of the FDCPA, including every one of the above-cited  
6 provisions.

8            31.    The Plaintiff is entitled to damages as a result of the Defendants’  
9 violations.

12           WHEREFORE, the Plaintiff prays that judgment be entered against the  
13 Defendants:

15 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the  
16 Defendants;

18 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)  
19 against the Defendants;

C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.  
§ 1692k(a)(3) against the Defendants;

23 D. Actual damages from the Defendants for the all damages for the  
24 negligent FDCPA violations and intentional, reckless, and/or negligent  
25 invasions of privacy and intentional infliction of emotional distress in an  
26 amount to be determined at trial for the Plaintiff;  
27

1 E. Punitive damages; and

2 F. Such other and further relief as may be just and proper.

3  
4 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

5  
6 DATED: August 8, 2013

TAMMY HUSSIN

7  
8 

9 By: \_\_\_\_\_  
10 Tammy Hussin, Esq.  
11 Lemberg & Associates, LLC  
12 Attorney for Plaintiff, Kelly Gabel  
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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

Kelly Gabel

PLAINTIFF(S)

v.

Performant Recovery, Inc.; and DOES 1-10,  
 inclusive,

DEFENDANT(S).

CASE NUMBER

**CV13- 5895** JLG

**SUMMONS**

TO: DEFENDANT(S): Performant Recovery, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Tammy Hussin, Esq., Lemberg & Associates, LLC, whose address is 6404 Merlin Drive, Carlsbad, CA 92011. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

AUG 13 2013

Dated: \_\_\_\_\_

Clerk, U.S. District Court

By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].